

LAST MINUTE AGENDA INFORMATION

01/23/13 Regular Meeting

(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the January 23, 2013 Regular meeting.)

| <u>ITEM NO.</u> | <u>DESCRIPTION</u> |
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| 6.5 | <p>CONSIDERATION TO ADOPT A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN SANDAG AND IMPERIAL BEACH REGARDING THE REGIONAL BEACH SAND REPLENISHMENT PROJECT II. (0140-40 & 0220-70)</p> <p>a. Attachment 1 – Draft Memorandum of Understanding between San Diego Association of Governments and the City of Imperial Beach regarding Remedial Measures Associated with the Regional Beach Sand Replenishment Project II</p> |
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CITY MANAGER &
CITY CLERK OFFICES

**MEMORANDUM OF UNDERSTANDING XXX
BETWEEN SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND THE CITY OF IMPERIAL BEACH
REGARDING REMEDIAL MEASURES ASSOCIATED WITH THE REGIONAL BEACH SAND
REPLENISHMENT PROJECT II**

SANDAG CONTRACT NO. XXX

This Memorandum of Understanding ("MOU") is made and entered into effective as of this ____ day of ____, 2013, by and between the San Diego Association of Governments ("SANDAG") and the City of Imperial Beach ("Imperial Beach").

RECITALS

The following recitals are a substantive part of this MOU:

WHEREAS, the Regional Beach Sand Replenishment Project II ("RBSP") placed approximately 450,000 cubic yards of sand in Imperial Beach between September 7 and October 4, 2012; and

WHEREAS, after completion of work in Imperial Beach for the RBSP, there were concerns about water ponds, that formed as a result of seasonal high tides and higher waves that overtop the foreberm at the oceanward face and flow across the sand, that were monitored by SANDAG during construction of the RBSP; and

WHEREAS, upon completion of work on the RBSP, remedial grading was completed on December 12 – December 14, 2012 to attempt to move temporary ponding westerly away from the revetment that exists in front of the homes along Seacoast Drive in Imperial Beach; and

WHEREAS, temporary drainage swales were completed January 4 – 6, 2013 to rapidly dissipate temporary ponding; and

WHEREAS, the conditions that create ponding may occur again in the future and SANDAG and Imperial Beach jointly desire to utilize City personnel and equipment in the event it is beneficial to create additional swales to help alleviate ponding; and

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

AGREEMENT

SANDAG AGREES:

1. With assistance from Moffatt & Nichol engineers, to continue to manage efforts related to the RBSP and to provide direction to Imperial Beach on the design, location, and timing of any work, including but not limited to the creation of additional drainage swales, that SANDAG would like to have

Imperial Beach perform ("Remedial Action") to help alleviate temporary ponding. SANDAG staff in coordination with Moffatt & Nichol engineers (as SANDAG's agent) will provide oversight of all Remedial Action undertaken by Imperial Beach staff at the direction of SANDAG.

2. That this work is part of the RBSP permits obtained by SANDAG, which are valid throughout the term of this MOU. Further SANDAG agrees that the work requested of Imperial Beach under this MOU is consistent with all applicable permits and environmental clearances, and in compliance with all local, state and federal regulations.
3. To pay Imperial Beach a maximum of up to \$30,000 total for any Remedial Action performed by Imperial Beach at the request and direction of SANDAG including but not limited to the creation of temporary drainage swales to assist in alleviating any temporary ponding that may occur on the beach between approximately Imperial Beach Boulevard and Encanto Avenue during the term of this agreement.
4. The Imperial Beach Public Works Director will invoice SANDAG no more than monthly for services completed and equipment rented by Imperial Beach staff at the request of SANDAG.
5. Neither Imperial Beach nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by SANDAG under or in connection with SANDAG's performance of its obligations set forth in this MOU. It is understood and agreed that, pursuant to the fullest extent provided under the laws of the State of California and/or applicable federal law, SANDAG shall fully defend, indemnify, and save harmless Imperial Beach, all officers, and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SANDAG under or in connection with SANDAG's performance of its obligations under this MOU.

IMPERIAL BEACH AGREES

6. That it will provide the necessary staff and equipment as requested by SANDAG to complete Remedial Action as directed by SANDAG. Efforts undertaken by the City may include equipment rental and staff time.
7. Neither SANDAG nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Imperial Beach under or in connection with Imperial Beach's performance of its obligations set forth in this MOU. It is understood and agreed that, pursuant to the fullest extent provided under the laws of the State of California and/or applicable federal law, Imperial Beach shall fully defend, indemnify, and save harmless SANDAG, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Imperial Beach under or in connection with Imperial Beach's performance of its obligations under this MOU.

THE PARTIES MUTUALLY AGREE:

8. Any notice required or permitted under this MOU may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

For SANDAG
401 B Street, Suite 800
San Diego, CA 92101
Attn: Shelby Tucker

For City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932
Attn: Greg Wade

9. That unless it is amended by the parties in writing, this MOU shall terminate on June 30, 2013, or on such earlier or later date as the parties may agree to in writing.
10. The indemnification provisions of this MOU shall survive termination of the MOU.
11. This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.
12. All terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.
13. For purposes of this MOU, the relationship of the parties is that of independent entities and not as agents of each other or as joint venturers or partners. The parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations.
14. No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
15. Nothing in the provisions of this MOU is intended to create duties or obligations to or rights in third parties to this MOU or affect the legal liability of the parties to this MOU to third parties.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU effective on the day and year first above written.

SAN DIEGO ASSOCIATION OF
GOVERNMENTS

APPROVED AS TO FORM:

GARY L. GALLEGOS
Executive Director

Office of General Counsel

City of Imperial Beach

APPROVED AS TO FORM:

GARY BROWN
City Manager

Jennifer M. Lyon
City Attorney